

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

CITY OF WOODINVILLE and NEIGHBORS
TO SAVE WELLINGTON PARK,

Petitioner,

v.

SNOHOMISH COUNTY,

Respondent.

Case No. 15-3-0016c

FINAL DECISION AND ORDER

SYNOPSIS

Petitioners challenged whether Snohomish County failed to comply with SEPA and GMA requirements in adopting Motion 15-410, declaring surplus real property (“Wellington Hills”) and authorizing its sale by intergovernmental transfer to a school district. Petitioners sought review before the Board alleging the County’s action was a *de facto* amendment to the County Comprehensive Plan’s Park Element and to development regulations pertaining to school siting. The Board concluded that the action was not a *de facto* amendment and dismissed the case for lack of jurisdiction.

I. INTRODUCTION

Wellington Hills is a 104-acre parcel located immediately north and west of the City of Woodinville adjacent to its Urban Growth Area (UGA) boundary.¹ It was purchased by

¹ Woodinville Illustrative Exhibit No. 1: Color map showing property location.

1 Snohomish County² with mitigation money from King County to be used for the “construction
2 of projects to mitigate the community impacts of King County’s wastewater treatment
3 facilities” in the Maltby area.³

4 The parties dispute whether the land was subsequently open to the public as a park.⁴
5 After a public process, Snohomish County proposed a regional sports and recreational
6 complex on the site and the County Parks Department issued a SEPA Notice of Action
7 declaring the regional sports complex plan environmentally non-significant .⁵ Woodinville
8 and Neighbors to Save Wellington Park (NSWP) appealed to the Snohomish County
9 Hearing Examiner who agreed with appellants.⁶ The County rescinded its SEPA
10 Determination of NonSignificance (DNS),⁷ purchased an alternative mitigation site less than
11 a quarter-mile to the North,⁸ and adopted Motion 15-410 approving the sale of the
12 Wellington property to the Northshore School District (NSD) on October 14, 2015.⁹ The City
13 of Woodinville and NSWP (collectively, Petitioners) timely appealed.
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16 Procedural matters relevant to the case, including supplementation of the record, are
17 detailed in Appendix A.

18 Legal issues relevant to the case are detailed in Appendix B.
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24 ² The former golf course was bought from UW. Additional acres surrounding it were purchased separately but
25 with funds from the same source (Brightwater mitigation).

26 ³ Woodinville Brief at 2; Ex. 6.2 Brightwater Settlement Agreement at 2. A “Maltby Area Park” for the “broad
27 community surrounding the treatment plant site” was specifically called out in Exhibit B to the Settlement
28 Agreement.

29 ⁴ Woodinville Brief at 2-3.

30 ⁵ Woodinville Brief at 5; Ex. 1.2 (Tiegen Declaration at Exhibit A: County March 20, 2013, Snohomish County
31 SEPA Notice of Action).

32 ⁶ Woodinville Petition for Review (PFR) at 4-5.

⁷ Woodinville Brief at 5.

⁸ County Response at 10.

⁹ Woodinville Brief at 9.

1 **II. BURDEN OF PROOF AND STANDARD OF REVIEW**

2 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations,
3 and amendments to them, are presumed valid upon adoption. This presumption creates a
4 high threshold for challengers as the burden is on the petitioners to demonstrate that any
5 action taken by the County is not in compliance with the GMA.

6 The Board is charged with adjudicating GMA compliance and, when necessary,
7 invalidating noncompliant plans and development regulations.¹⁰ The scope of the Board's
8 review is limited to determining whether a County has achieved compliance with the GMA
9 only with respect to those issues presented in a timely petition for review.¹¹ The GMA
10 directs that the Board, after full consideration of the petition, shall determine whether there
11 is compliance with the requirements of the GMA. The Board shall find compliance unless it
12 determines that the County's action is clearly erroneous in view of the entire record before
13 the Board and in light of the goals and requirements of the GMA. RCW 36.70A.320(3). In
14 order to find the County's action clearly erroneous, the Board must be "left with the firm and
15 definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1, 121 Wn.2d*
16 *179, 201 (1993).*

17 **III. BOARD JURISDICTION**

18 The Board finds the Petition for Review was timely filed, pursuant to RCW
19 36.70A.290 (2). The Board finds the Petitioners have standing to appear before the Board,
20 pursuant to RCW 36.70A.280(2)(a) and (b).

21 The Growth Management Act at RCW 36.70A.280 carefully defines the matters
22 subject to the Board's review:

23 (1) The growth management hearings board shall hear and determine
24 only those petitions alleging ... (a) that ... a state agency, county or city
25 planning under this chapter [GMA] is not in compliance with ... chapter

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30 ¹⁰ RCW 36.70A.280, RCW 36.70A.302.

31 ¹¹ RCW 36.70A.290(1).

1 43.21C RCW [SEPA] as it relates to plans, development regulations, or
2 amendments, adopted under [the GMA or SMA].¹²

3 As discussed below, **the Board finds** that, under RCW 36.70A.280(1), it does not
4 have jurisdiction over the subject matter of the petition and the case is **dismissed**.

5
6 **De Facto Amendment**

7 The jurisdiction of the GMHB is statutorily established by RCW 36.70A.280(1), which
8 reads in pertinent part:

9 (1) The growth management hearings board shall hear and determine only
10 those petitions alleging either:

11 (a) That, except as provided otherwise by this subsection, a state agency,
12 county, or city planning under this chapter is not in compliance with the
13 requirements of [the GMA], ...or [SEPA] as it relates to plans,
14 development regulations, or amendments, adopted under RCW
15 36.70A.040 ...

16 The courts have explained: "GMHBs have limited jurisdiction to decide only petitions
17 challenging comprehensive plans, development regulations, or permanent amendments to
18 comprehensive plans or development regulations." *Woods v. Kittitas County*, 162 Wn.2d
19 597,609, 174 P.3d 25 (2007). Thus "unless a petition alleges that a comprehensive plan or
20 a development regulation or amendments to either are not in compliance with the
21 requirements of the GMA, [the Board] does not have jurisdiction to hear the petition."¹³

22 In sum, the GMHB has jurisdiction to hear appeals of local decisions adopting or
23 amending comprehensive plans or development regulations. In this statutory framework,
24 the Board has previously ruled that the Board has no jurisdiction over a city's decision to
25 surplus property. In *Association to Protect Anderson Creek*, the Board dismissed a
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28 ¹² Emphasis added.

29 ¹³ *Wenatchee Sportsmen Assoc. v. Chelan County*, 41 Wn.2d 169, 178, 4 P.3d 123 (2000); *BD Lawson*
30 *Partners, LP v. Black Diamond*, Order of Dismissal, GMHB Case No. 14-3-0007 (August 18, 2014) at 6-7
31 ("Board has consistently rejected challenges to city or county resolutions or ordinances that do not enact plans
or regulations but simply constitute part of the decision process").

1 challenge to the city's sale of surplus property within the Anderson Creek utility lands, ruling
2 that it lacked jurisdiction over surplus property issues.¹⁴

3 However, in *Alexanderson v. Clark County*,¹⁵ the court held that actions taken by
4 local governments that do not explicitly purport to amend comprehensive plans or
5 development regulations but that, "in effect, supersede and amend the comprehensive plan"
6 are *de facto* amendments that do fall within the Board's GMA jurisdiction.¹⁶ Thus, in
7 *Alexanderson, et al. v. City of La Center*,¹⁷ the Board explained the necessity of an
8 additional step in determining its jurisdiction where a challenged action is alleged to override
9 provisions of a comprehensive plan. In *BD Lawson Partners*,¹⁸ the Board set out factors to
10 be considered when making that decision:¹⁹

- 11 • Whether an enforceable agreement or action has the actual effect of requiring
12 the jurisdiction to act inconsistently with its planning,²⁰ and/or
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17 ¹⁴ *Association to Protect Anderson Creek v. City of Bremerton*, Order on Bremerton's Dispositive Motions,
18 GMHB Case No. 95-3-0053 (October 18, 1995), at 9; *See also, Cossalman, et al. v. Town of Eatonville*, Order
19 on Motions, GMHB Case No. 95-3-0032 (June 20, 2005) at 3.

20 ¹⁵ *Alexanderson v. Board of Clark County Commissioners*, 135 Wn. App. 541, 549-50, 144 P.3d 1219 (Div. 2
2006).

21 ¹⁶ *See also Your Snoqualmie Valley v. City of Snoqualmie*, Order on Motions, GMHB Case No. 11-3-0012
22 (March 8, 2012) at 12-13 (pre-annexation agreement in direct contradiction of city comprehensive plan policies
was a *de facto* amendment).

23 ¹⁷ *Alexanderson, et al. v. City of La Center*, Order on Dispositive Motions, GMHB Case No. 12-2-0004 (May 4,
2012) at 11.

24 ¹⁸ *BD Lawson Partners LP, et al. v. City of Black Diamond*, Order of Dismissal, GMHB Case No. 14-3-0007
25 (August 18, 2014) at 5-6; *Olympia MasterBuilders, et al. v. Thurston County*, Final Decision and Order, GMHB
Case No. 15-2-0002 (May 12, 2016) at 9.

26 ¹⁹ *Alexanderson v Board of Clark County Commissioners*, 135 Wn. App. 541, 548-49, 144 P.3d 1219 (2006);
27 *Your Snoqualmie Valley* at 9.

28 ²⁰ In *Your Snoqualmie Valley*, as in *Alexanderson*, the City had signed an MOU with an outside entity. The
29 language of the MOU did not explicitly amend a goal of the County's comprehensive plan, but one section had
30 the actual effect of doing so because it created a direct conflict between the City's comprehensive plan
31 annexation policies and the annexation policies in the Resolution's agreement. The Board found that section
of the MOU had the legal effect of amending the plan, because it would override an express requirement of the
comprehensive plan. *Your Snoqualmie Valley* at 12; *Alexanderson*, 135 Wn. App. 541 at 548-50; *contra, Lake
Stevens v. Snohomish*, Order on Motions, GMHB Case No. 09-3-0008 (July 6, 2009) at 4.

- 1 • Whether a unilateral action makes inevitable a subsequent legislative result
2 enacting a predetermined amendment to the comprehensive plan or
3 development regulations.²¹

4 It is undisputed that adoption of Motion 15-410 did not, on its face, amend the
5 County's comprehensive plan or development regulations. Assuming *arguendo* that the
6 motion caption is not dispositive of the question of a *de facto* amendment, the Board
7 analyzes the effect of the action.
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10 **Parks Plan Policies and Capital Facilities Plan**

11 Petitioners contend that the County's General Open Space, Shoreline and Scenic
12 Resources Policies²² call for the County to consider including natural areas, rural
13 landscaped areas, low intensity park and recreation sites, etc. for inclusion in an open
14 space system.²³ LU Policy 10.B.2 says the County shall *consider* various land acquisition
15 techniques in the development of cooperative management plans and implementation
16 strategies for open space areas of inter-jurisdictional significance.²⁴ The Board is not
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20 ²¹ *Your Snoqualmie Valley*, Order on Motions, GMHB Case No 11-3-0012 (March 8, 2012) at 12, citing
21 *Alexanderson* at 548-50; *Contra, e.g., Lake Stevens v. Snohomish*, Order on Motions, GMHB Case No. 09-3-
22 0008 (July 6, 2009) at 4; *Six Kilns v. City of Sumner*, Order of Dismissal on Motions, GMHB Case No. 13-3-
23 0005 (July 16, 2013) at 8-9 (Resolution authorizing sale of golf course was not a final action).

24 ²² Snohomish 2015 Comprehensive Plan, General Policy Plan at LU-65-66.

25 ²³ **GOAL LU 10 Identify and protect open space, natural and scenic resources and shoreline areas**
26 reads, in pertinent part:

27 **LU Policies 10.A.1** The County shall consider the following features for inclusion in an open space system:

28 (a) natural or scenic resource areas;

29 (b) water supply protection areas (public watersheds) and natural drainage easements;

30 (c) urban and rural landscaped areas, such as public or private golf courses, public or private school yards,
31 cemeteries, active parks and arboretums;

32 (d) public and private low intensity park and recreation sites such as wildlife preserves, nature reservations,
sanctuaries, or hiking, equestrian and biking trails; ...

²⁴ Woodinville Brief at 16. **LU 10.B.2** reads:

The county shall consider various land acquisition techniques in the development of cooperative
management plans and implementation strategies for open space areas of inter-jurisdictional
significance.

1 persuaded that the County's sale of Wellington Hills in any way amends or contravenes this
2 policy.

3 The County disputes Petitioners' assertion that development of Wellington Hills as a
4 park was, or is now, necessary for the County to meet its GMA responsibilities and the
5 Board agrees. First, GMA establishes a minimum level of service for necessary public
6 facilities to support development²⁵ but does not require that all potential park land be
7 retained for that purpose. Wellington Hills was not planned as a park to address GMA
8 service-level requirements or purchased with County general funds. Rather Wellington Hills
9 was purchased with settlement funds²⁶ as a mitigation project to compensate the Maltby
10 area for "the stigma of having a sewage treatment plant," the Brightwater Wastewater
11 Treatment Facility (Brightwater), by creating "an amenity that would draw and attract people
12 ... a positive to offset the negative."²⁷ As part of the Brightwater Settlement Agreement, the
13 County agreed to provide a primarily active recreation facility in the Maltby area.²⁸ The
14 County's 2014 Parks Inventory report identifies Wellington Hills as a "mitigation" project.²⁹
15 Of 14 potential park amenities,³⁰ the 2014 Parks Inventory counts Wellington Hills as
16 contributing no amenities to the County's level of service for parks.³¹ Finally, the County's
17 Capital Facilities Plan (CFP) contains language providing explicit flexibility for siting and
18 development of mitigation projects:
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23 ²⁵ **RCW 36.70A.020(12) Public facilities and services** reads in pertinent part:

24 Ensure that those public facilities and services necessary to support development shall be adequate
25 to serve the development at the time the development is available for occupancy and use without
26 decreasing current service levels below locally established minimum standards.

26 ²⁶ County Response at 6.

27 ²⁷ County Response at 5-7; County remarks at HOM, transcript at 53.

28 ²⁸ County Response at 6; Ex. 6.2 (Attached as App. C to County Response) Excerpts of Settlement
29 Agreement and Release (December 20, 2005), p. 3.

30 ²⁹ County Response at 7; Ex. PW 4.5 (attached as Tab 21 to Woodinville Brief).

31 ³⁰ Athletic Fields, Bicycle, Boat Launch, Camping, Equestrian Access, Off-leash Dog Park, Picnicking,
32 Playground, Restroom, Skate Park, Swimming, Trails, Water Access, and Wildlife Viewing.

³¹ Woodinville Supplement Ex. PW 4.23 (Attached as Tab 17 to Woodinville Brief): 2014 Snohomish County
Park Inventory Report, Amenities Spreadsheet, p. 3; County's Brief at 6.

1 This CFP addresses minimum planning requirements that are necessary
2 to support development under the GMA. Adoption of the CFP does not
3 preclude or restrict capital improvement projects that are not specifically
4 identified in the CFP when such projects do not materially impair the
5 county's ability to achieve the minimum planning goals set forth in the
6 CFP.... *Examples of such capital improvement projects are facilities or
amenities that are identified as mitigation for site-specific developments*
...³²

7
8 The Board's *Six Kilns* decision is instructive.³³ There, petitioners argued the city's
9 decision to sell a golf course was a *de facto* amendment of policies to retain parks and open
10 space. However, the Board noted the open space retention policy made an express
11 exception for "unnecessary lands which are surplus," so surplusizing the unnecessary golf
12 course did not amend the plan.³⁴ Similarly here, Snohomish County's CFP for parks
13 acknowledges that mitigation projects may be sited and developed with more flexibility than
14 parks that contribute to required service levels. Since this exception is already contained in
15 the plan, the change of siting for the Maltby mitigation park is not a *de facto* amendment.
16

17 **The Board finds** that Petitioners have not carried their burden to explain how the
18 County's decision to relocate the mitigation project to a different property³⁵ and surplus
19 Wellington Hills *requires* the County to (1) act inconsistently with its comprehensive planning
20 for parks, or (2) enact a pre-determined amendment to its comprehensive plan or
21 development regulations.
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24 ³² Ex. PW 4.21 (Attached as Appendix F to County Response): 2015 Capital Facilities Plan (Adopted June 10,
2015) p. 7 (emphasis added).

25 ³³ *Six Kilns v City of Sumner*, GMHB 13-3-0005, Order on Motion to Dismiss (July 16, 2013). The Board's
26 primary holding in *Six Kilns* was that the City's action was not final. Petitioners here contend the Board's other
27 grounds for declining to find a *de facto* amendment in *Six Kilns* are merely advisory. Petitioners' remarks at
HOM, Transcript at 41-43.

28 ³⁴ *Six Kilns v City of Sumner*, GMHB 13-3-0005, Order on Motion to Dismiss (July 16, 2013), p. 9: "The Board
29 finds the Goal 2.7 provision for surplusizing unnecessary lands modifies the mandate to "retain City owned land"
30 so that the surplusizing resolution is not a *de facto* amendment."

31 ³⁵ The Board notes that the undisputed reason for the County's change of location is that Woodinville mounted
32 legal challenges to the County's proposal to build an active recreation complex, as required by the Settlement
Agreement, at Wellington Hills.

1
2 **Capital Facilities for Schools**

3 Petitioners' argument that Motion 15-410 is a *de facto* amendment of the County's
4 capital facilities planning for schools is equally unavailing. The County's comprehensive
5 plan provisions for schools require each school district to submit its CFP to the County
6 Planning and Development Services Department prior to formal adoption by the district.³⁶ A
7 district planning to expand its school capacity must submit an updated plan at least every
8 two years, but no more than once a year.³⁷ SCC Chapter 30.66C pertains to School Impact
9 Mitigation and its purpose is described as:

- 10
11 (a) to ensure that adequate school facilities are available to serve new
12 growth and development; and
13 (b) to require that new growth and development pay its proportionate
14 share of the costs of new school facilities.

15 In order to be eligible to receive school impact fees, a school district must have its
16 CFP adopted by reference as part of the County's comprehensive plan³⁸ every two years³⁹
17 in sufficient detail to allow calculation of school impacts fees.⁴⁰ Each district must project its
18 school capacity needs for the current year and for not less than the succeeding five-year
19 period and include estimated capital costs for the additional capacity needs.⁴¹

20 Petitioners assert that the purchase of Wellington Hills by NSD required the school
21 district to update its CFP to include the Wellington Hills site and, in turn, required the County
22 to adopt the district's amended CFP into its comprehensive plan.⁴² The Board disagrees.
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26 ³⁶ Snohomish County Comprehensive Plan, Appendix F, Review Criteria for School District Capital Facilities
27 Plans (June 10, 2015) at F-2.

28 ³⁷ *Id.*

29 ³⁸ SCC 30.66C.020.

30 ³⁹ SCC 30.66C.030.

31 ⁴⁰ SCC 30.66C.040.

32 ⁴¹ SCC 30.66C.045(2).

⁴² NSWP Brief at 12; Petitioners' remarks at HOM, transcript at 8-12.

1 As the Board reads these provisions, Snohomish County requires school districts to
2 look out at least 5 years in projecting capacity needs. A district planning to expand capacity
3 must update its plan every two years. If a district desires to receive mitigation funds to help
4 pay for school projects, additional data must be provided to enable the district to calculate
5 those funds. However, the Board finds nothing in these codes prohibiting a district from
6 purchasing property for an as-yet unspecified purpose. Nor does purchase by a school
7 district require a prior amendment to the County's comprehensive plan. Neither must the
8 school district or County adopt new capital facilities plans unless a capacity expansion
9 project is to occur in the next 2-5 years. Petitioners have provided no evidence that NSD
10 intends to expand on the Wellington Hills site in the next 5 years. Thus there has been no
11 *de facto* amendment to the County's CFP for schools.
12

13 **The Board finds** that Petitioners have not carried their burden to explain how the
14 intergovernmental transfer of Wellington Hills *requires* the County to (1) act inconsistently
15 with its comprehensive planning for schools, or (2) enact a predetermined amendment to its
16 comprehensive plan or development regulations.
17

18 **Development regulations and school siting**

19 Petitioners first assert that the sale of the Wellington Hills property to the School
20 District would render Woodinville's infrastructure (transportation) inadequate and require the
21 extension of sewer service outside the UGA⁴³ in violation of the County's Utility Objective,
22 UT B.3.⁴⁴ Petitioners' arguments are unavailing.
23
24

25 ⁴³ Woodinville Brief at 18.

26 ⁴⁴ UT B.3 provides:

27 The county shall prohibit new municipal sanitary sewer systems beyond Urban Growth Areas *except*
28 as allowed under Countywide Planning Policy DP-6. (Emphasis added.)
29 CPP DP-6 mirrors RCW 36.70A.110(4) which provides in pertinent part:
30 *In general*, it is not appropriate that urban governmental services be extended to or expanded in rural
31 areas *except* in those limited circumstances shown to be necessary to protect basic public health
32 and safety and the environment and when such services are financially supportable at rural densities
and do not permit urban development. (Emphasis added.)

1 First, the language cited by Petitioners is not strictly prohibitive because it describes
2 exceptions. More importantly, as in *Six Kilns*, “[n]o development is authorized by the
3 Resolution, and no change to the applicable land use designation or zoning is adopted.”⁴⁵
4 Although Petitioners complain about County assurances to the school district that its
5 development regulations do not preclude siting a school on the property,⁴⁶ the challenged
6 Motion reads in relevant part:
7

8 WHEREAS, the County makes no representation nor does the County
9 provide any assurance, warranty or guarantee of future approval of the
District’s intended use of the Wellington Hills Property; ...⁴⁷

10
11 The same language appears on the Executive/Council Approval Form.⁴⁸ Whatever
12 future development may occur on the property⁴⁹ will be subject to a later, site-specific
13 permitting action wherein those impacts must be addressed.⁵⁰

14 Petitioners next argue that sale of the property to the School District is a *de facto*
15 amendment because it contravenes the County’s General Plan Policy CF.10.A.5, which
16 states:
17

18 The County shall review and consider modifications to its development
19 regulations as necessary to facilitate school siting within urban growth
20 areas and discourage the location of middle and high schools outside of
UGAs.

21 The County responds that it did review and consider modifications to discourage the
22 location of middle and high schools outside of the UGA when it amended its development
23 regulations to prohibit schools in eight of its eleven Rural and Resource zones – thus
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26 ⁴⁵ County Response at 4; *Six Kilns* at 6.

27 ⁴⁶ NWSP Petition For Review (December 11, 2015) at 7.

28 ⁴⁷ Motion No. 15-410 (October 14, 2015) at 1 (Attached as Tab 25 to Woodinville Brief).

29 ⁴⁸ County Ex. 3.1 at 2 (attached as Tab 24 to Woodinville Brief).

30 ⁴⁹ The County asserts, and the Board tends to agree, that given that such development may be many years in
the future and that the property is adjacent to the Urban Growth Area (UGA) on two sides, it is not
unforeseeable that the property may have been incorporated into the UGA by such a future date.

31 ⁵⁰ County remarks at the HOM, Transcript at 49-50.

1 fulfilling this policy goal.⁵¹ In the remaining three zones, schools are allowed only as a
2 “Conditional Use”⁵² – meaning that additional permitting review and approval in the form of
3 a conditional use permit is required, including special setback requirements and building
4 height limitations.⁵³ The Wellington Hills property is zoned R-5 and thus construction of a K-
5 12 school is not irreconcilable with existing County development regulations.⁵⁴

6
7 **The Board finds** that Petitioners have not carried their burden to explain how the
8 intergovernmental transfer of Wellington Hills *requires* the County to (1) act inconsistently
9 with its comprehensive planning for schools, or (2) enact a predetermined amendment to its
10 comprehensive plan or development regulations.

11 12 **SEPA**

13 Petitioners argue that Wellington Hills has been designated, inventoried and used as
14 a “County Park” for years and thus is a “specifically designated and authorized public use
15 established by the public landowner” such that SEPA review is required before the County
16 sells the property.⁵⁵ Again, under RCW 36.70A.280, the Board will hear and determine *only*
17 those petitions alleging ... (a) that ... a state agency, county or city planning under this
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23 ⁵¹ County Response at 23-24; County remarks at Hearing on the Merits, transcript at 48-49; SCC 30.22.110
24 “Rural and Resource Use Matrix.”

25 ⁵² *Id.*; County Response at 4.

26 ⁵³ County Response at 24.

27 ⁵⁴ The County’s school siting policies are not at issue in this case. Had there been a challenge to the County’s
28 comprehensive plan update alleging that its school siting policies were not in compliance with the multi-county
29 planning policies (MPPs) of Vision 2040, the Board might have had more to say. See, *Summit-Waller, et al. v.*
30 *Pierce County*, Final Decision and Order, GMHB Case No. 15-3-0010c and Order Finding Continuing Non-
31 Compliance in coordinated Case No. 12-3-0002c (May 9, 2016) at 38-53.

32 ⁵⁵ Woodinville Brief at 22-23 citing WAC 197-11-800(5), providing a categorical exemption from SEPA
requirements for the sale or transfer of real property “only if the property is not subject to a specifically
designated and authorized public use established by the public landowner and used by the public for that
purpose.”

chapter [GMA] is not in compliance with ... chapter 43.21C RCW [SEPA] *as it relates to plans, development regulations, or amendments, adopted under [the GMA or SMA]*.⁵⁶

As the Board explained in *Douglas Tooley v. Gregoire and Seattle*.⁵⁷

The Board may *only* review a SEPA challenge that is directly related to the *adoption or amendment* of a GMA or SMA plan or development regulation.

This limitation on the scope of the Board's SEPA review is reiterated three times in the statutory requirements concerning the Board's final order – RCW 36.70A.300:

(1) The Board shall issue a final order that shall be based *exclusively* on whether or not a state agency, county or city is in compliance with ... chapter 43.21C RCW *as it relates to adoption of plans, development regulations, and amendments* thereto, under [GMA or SMA].

(3)(a) ... compliance with the requirements of ... chapter 43.21C RCW *as it relates to adoption of plans, development regulations, and amendments* thereto, under [GMA and SMA].

(3)(b) ... not in compliance with the requirements of ... chapter 43.21C RCW *as it relates to adoption of plans, development regulations, and amendments* thereto, under [GMA and SMA].

In short, the Board lacks jurisdiction to determine SEPA compliance except as it is tied directly to "adoption" or "amendment" of a GMA or SMA plan or regulation.

Having found that Wellington Hills is a mitigation project and that the County's sale of the property was not an amendment to its comprehensive plan or development regulations, the Board has no jurisdiction to consider the merits of Petitioners' SEPA complaint.

⁵⁶ See *Spokane County v. EWGMHB*, 176 Wn. App. 555, 569-570, 309 P.3d 673 (2013) and *Davidson Serles*, 159 Wn. App. 616, 628, 246 P.3d 822 (2011) (both cases stating that the Board may review petitions alleging non-compliance with SEPA in adopting or amending comprehensive plans or development regulations).

⁵⁷ *Douglas Tooley v. Governor Christine Gregoire and City of Seattle*, Order on Dispositive Motions, Case No. 11-3-0008 (Nov. 8, 2008) at 8. (Emphasis added).

1 **IV. CONCLUSION**

2 Based on the foregoing, the Board finds that Motion 15-410 does not require the
3 County to take action contrary to its comprehensive plan or to enact a pre-ordained
4 amendment to its plan and is, therefore, not a *de facto* amendment. Having determined that
5 the challenged action does not constitute a *de facto* amendment of the comprehensive plan,
6 the Board must dismiss Petitioners' challenge for lack of subject matter jurisdiction.
7

8 **V. ORDER**

9 Based upon review of the Petition for Review, the briefs and exhibits submitted by the
10 parties, the GMA, prior Board orders and case law, having considered the arguments of the
11 parties, and having deliberated on the matter, the Board Orders:
12

- 13 • Case No. 15-3-0016c is **dismissed**.
14

15 SO ORDERED this 26th day of May, 2016.
16

17 _____
18 Cheryl Pflug, Board Member
19

20 _____
21 Margaret Pageler, Board Member
22

23 _____
24 Nina Carter, Board Member
25

26 **Note: This is a final decision and order of the Growth Management Hearings Board**
27 **issued pursuant to RCW 36.70A.300.⁵⁸**
28

29 _____
30 ⁵⁸ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
31 parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840.

Appendix A: Procedural matters

On December 10, 2015, The City of Woodinville filed a petition for review. The petition was assigned Case No. 15-3-0014. On December 11, 2015, Neighbors to Save Wellington Park filed a petition for review. The petition was assigned Case No. 15-3-0016. Case Nos. 15-3-0014 and 15-3-0016 were consolidated as Case No. 15-3-0016c.

A prehearing conference was held telephonically on January 25, 2016. Petitioner City of Woodinville appeared through its counsel Peter Eglick. Petitioner Neighbors to Save Wellington Park appeared through its counsel Richard Aramburu. Respondent Snohomish County appeared through its attorney Laura Kiselius, filling in for Deputy Prosecuting Attorney Brian Dorsey.

Motion to Supplement and Prehearing Conference Memo

On February 19, 2016, Woodinville filed a Motion to Supplement the Record with a video and multiple photos, e-mails, and documents. The same day, the County filed a Prehearing Conference Memo to explain the context in which the challenged action took place, suggest alternative issue statements, and indicate its intent to file a dispositive motion. The Memo likely resulted in part from a scheduling conflict that prevented the County attorney most familiar with the case from attending the prehearing conference. Petitioners objected to the County's Memo as inappropriate briefing. The County did not object to Petitioners proposed documents.

Although the County's desire to clarify was understandable, Petitioners' objection to the Prehearing Conference Memo (County Memo) is well-taken. **The County Memo is stricken** from the record.

A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be served on the board but **it is not necessary to name the board as a party**. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.

This case is unusual in that the challenged action was not a comprehensive plan update with an associated public process. Thus many of the documents were not quickly identifiable as appropriately part of the record. Having received no objection from the County, Petitioners' Motion to Supplement the Record is **GRANTED** pursuant to WAC 242-03-510.⁵⁹ The Supplementation Table below indicates the ruling of the Board with respect to the document requested for supplementation of the record.

Supplementation Table

Proposed Exhibit #	Exhibit Title	
PW-1	Northshore School Board Meeting – Link from School Board Meeting Recordings https://player.vimeo.com/external/151196998.hd.mp4?s=1a38ed16fd9a7106ba8bd6be3490aa1204c65892&profile_id=113	Granted
PW-2.1	Bates #4407-08, Picture of park and undeveloped site signs	Granted
PW-2.2	Bates #4418-19 Photos of signage	Granted
PW-2.3	Bates #4468-71 Signs showing Wellington Hills as a park from 2012	Granted
PW-2.4	Bates #4463 Photo of blocked road	Granted
PW-3.1	Email dated 6/25/15 to G. Jakotich, M. Monroe Re: Woodinville Resolutions re: Wellington	Granted
PW-3.2	Email dated 12/01/15 to J. Greve (Park Op) Re: WHP	Granted
PW-3.3	Email dated 5/27/15 to S. Reay Re: Amendment to Covenant-Wellington Hills	Granted
PW-3.4	Email dated 6/26/15 to K. Mooseker Re: Woodinville Resolution re: Wellington	Granted
PW-3.5	Email dated 7/16/15 to L. Brent Re: 240 th ROW Q&A	Granted
PW-3.6	Email dated 10/11/15 to SB District2	Granted

⁵⁹ As discussed at the Prehearing Conference, a motion to supplement is not required when the opposing party is amenable to supplementation.

	Re: Property Acquisition – Purchase & Sale Agmt.	
PW-3.7	Email dated 10/12/15 to K. Fujiwara Re: NSD Group – More on Property	Granted
PW-3.8	Email dated 10/14/15 to D. Wilson Re: NSG Group – Wellington 3	Granted
PW-3.9	Email dated 8/23/12 to Wellington Hills Re: Memo re Caretakers	Granted
PW-3.10	Email dated 12/3/15 to J. Greve, J. Tucker, N. Gero, R. Swanson, K. Watanabe, D. Green, D. Dailer, C. Bishop Re: Closing the Park	Granted
PW-3.11	Email dated 12/1/15 to N. Gero, B. Leonard, R. Patton, K. Watanabe Re: New WO: WHP-15347, Remove all park signage	Granted
PW-3.12	Email dated 12/7/15 to N. Gero Re: South Schedule Oct – Dec 2015 Close park for the last time	Granted
PW-3.13	Email dated 12/1/15 to D. Dailer Re: WHP – “Take down anything that has to do with it being a park”	Granted
PW-3.14	Email dated 10/22/15 to T. Teigen, S. Reay, B. Dorsey 2 nd RFP, Bates #4490-93 Sign (w/attachments)	Granted
PW-3.15	Email dated 10/18/13 to B. Japar Re: Expired Notice of Action Signs at WHP	Granted
PW-3.16	Email dated 12/5/15 to J. Tucker Re: “You have been assigned Work Order: WHP-15380” (with Photo)	Granted
PW-3.17	Email dated 9/25/15 to Jeanette Henderson Wellington Hills Property (w/o attached docs.)	Granted
PW-3.18	Email dated 10/19/15 to M. Monroe Re: Wellington	Granted
PW-3.19	Email dated 10/15/15 to M. Monroe Re: Wellington Hills	<u>Granted</u>
PW-3.20	Email dated 5/11/15 to S. Clifton Re: Curtis Family Farm (with attachment)	Granted
PW-3.21	Email dated 10/23/15 to S. Reay Re: Wellington Hills (with letter to School Board from M. Monroe)	Granted
PW-3.22	Email dated 12/14/15 to R. Bosanko Re: Closed Site (with photos)	Granted

PW-3.23	Email dated 11/25/15 to FASTSIGNS 471 Re: More signs (Site Closed)	Granted
PW-3.24	Email dated 12/5/15 to K. Watanabe, R. Patton, N. Gero Re: Completed Work Order WHP-15380 (with photos)	Granted
PW-3.25	Email dated 12/15/15 - List of Completed Work Orders	Granted
PW-3.26	Email dated 12/2/15 to K. Watanabe Re: South Schedule – Blocking by maintenance	Granted
PW-3.27	Email dated 7/29/15 to N. Hernandez Re: Wellington	Granted
PW-3.28	Email dated 4/6/15 to K. Mooseker, R. Fujiwara Re: Wellington Hills Kennedy/Curtis Update	Granted
PW-3.29	Email dated 3/29/15 to R. Fujiwara, K. Mooseker Re: Wellington Hills Update	Granted
PW-3.30	Email dated 3/13/15 to T. Teigen, D. Bailey Re: NSD/Wellington Hills	Granted
PW-3.31	Email dated 5/12/15 to K. Mooseker, R. Fujiwara Re: Wellington Agreement	Granted
PW-4.1	Feasibility Study: Northshore School District Feasibility Study, Wellington Hills Site, Woodinville	Granted
PW-4.2	Environmental Checklist for Wellington Hills County Park	Granted
PW-4.3	Letter from Terri Strandberg to Jeanette Henderson with Exhibits	Granted
PW-4.4	Submittal Drawings for Wellington Hills: Bruce Dees & Associates	Granted
PW-4.5	Bates #4382 Wellington Hills page from December 2014 Inventory Report	Granted
PW-4.6	Parks Advisory Board Minutes http://wa-snohomishcounty.civicplus.com/DocumentCenter/View/28269	Granted
PW-4.7	Bates #4426 Schedule for Wellington Hills County Park Open and Close	Granted
PW-4.8	Capital Projects Re: Property Acquisition – Board Follow-up	Granted
PW-4.10	List of Web Links for “Wellington Hills Park”	Granted
PW-4.11	Bruce Dees and Associates - Wellington Hills Enters the CD Phase http://www.bdassociates.com/2013/07/02/wellington-	Granted

	hills-enters-the-cd-phase/	
PW-4.12	Wellington Hills County Park History and Update http://snohomishcountywa.gov/DocumentCenter/View/19819	Granted
PW-4.13	Motion 15-440 Acquisition of Property as Community Mitigation for Brightwater Project – Active Recreation	Granted
PW-4.14	Motion 12-013 Acquisition of Property as Community Mitigation for Brightwater Project – Active Recreation	Granted
PW-4.15	Exhibit 2 to Bill of Sale and General Assignment	Granted
PW-4.16	Letter to NSD Board of Directors from R. Aramburu	Granted
PW-4.17	Title Report Schedule B – Special Exceptions	Granted
PW-4.18	Snohomish County Public Parks Document	Granted
PW-4.19	Snohomish County Comprehensive Plan http://snohomishcountywa.gov/2139/Comprehensive-Plan	Granted
PW-4.20	GPP Capital Facilities section http://snohomishcountywa.gov/DocumentCenter/Home/View/8718	Granted
PW-4.21	2015 Capital Facilities plan http://snohomishcountywa.gov/DocumentCenter/View/12027	Granted
PW-4.22	Northshore – 2014 CPP Northshore http://snohomishcountywa.gov/documentcenter/view/18692	Granted
PW-4.23	Parks http://snohomishcountywa.gov/3361/Comprehensive-Plan---Parks-Element	Granted
PW-4.24	Snohomish Co. Parks - Wellington Hills County Park Update December 2013	Granted
PW-4.25	Superintendent's Updates	Granted
PW-4.26	Snohomish Co. Council, Amended Ordinance No. 12-092 (Adopting 2013-2018 Capital Improvement Program	Granted
PW-4.27	LPD Engineering - Handwritten Notes	Granted

The briefs of the parties were timely filed and are referenced in this order as follows:

- The City of Woodinville's Prehearing Brief, March 30 , 2016 (Woodinville Brief)
- Neighbors to Save Wellington Park's Prehearing Brief, March 30, 2016 (NSWP Brief)

- Respondent Snohomish County's Prehearing Brief, April 11, 2016 (County Response)
- The City of Woodinville's Reply Brief, April 18, 2016 (Woodinville Reply)
- Petitioner NSWP's Reply Brief, April 18, 2016 (NWSP Reply)

Hearing on the Merits

The hearing on the merits was convened on April 27, 2016, at the Robert Drewel Building in Everett, Washington. Present for the Board were Nina Carter, Margaret Pageler, and Cheryl Pflug, presiding officer. Petitioner City of Woodinville was represented by Peter Eglick. Petitioner Neighbors to Save Wellington Park was represented by Richard Aramburu. Respondent Snohomish County was represented by Deputy Prosecuting Attorney, Laura Kisielius. Mary Ann Pennington provided court reporting services.

The hearing afforded each party the opportunity to emphasize the most important facts and arguments relevant to its case. Board members asked questions seeking to thoroughly understand the history of the proceedings, the important facts in the case, and the legal arguments of the parties.

Appendix B: Legal Issues

Per the Prehearing Order, legal Issues in this case were as follows:

1. Has the County failed to comply with SEPA in its *de facto* plan amendments, erasure of Wellington's Park status, unilateral removal of Wellington Park from public park use, and binding agreement to sell Wellington Park, which is "subject to a specifically designated and authorized public use" per WAC 197-11-800(5)(b), to Northshore School District?
2. In selling Wellington Hills Park, has Snohomish County failed to comply with the GMA requirement in RCW 36.70A.120 that:
Each county and city that is required or chooses to plan under RCW 36.70A.040 shall perform its activities and make capital budget decisions in conformity with its comprehensive plan.
3. In its *de facto* plan amendments purporting to remove Wellington Park from public park use and sell it to Northshore School District, has Snohomish County failed to comply with the GMA requirement in RCW 36.70A.100 that:
The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or city has, in part, common borders or related regional issues.
4. In selling Wellington Hills Park for school development without meaningful notice to and participation by the public, has Snohomish County failed to comply with and adopted a *de facto* plan amendment in violation of and failing to further RCW 36.70A.020(11), RCW 36.70A.035, RCW 36.70A.130, and RCW 36.70A.140, and the County's adopted GMA public participation plan in Ch. 30.74 SCC?
5. In selling Wellington Hills Park for school development without meaningful notice to, coordination with, or opportunity for participation by the public and the City of Woodinville, has Snohomish County failed to comply with and adopted a plan amendment in violation of RCW 36.70A.020(11), RCW 36.70A.035, RCW 36.70A.100, RCW 36.70A.130, RCW 36.70A.140 and RCW 36.70A.210?
6. Has Snohomish County failed to comply with or further RCW 36.70A.020(9), RCW 36.70A.070 (preamble), RCW 36.70A.130(1)(d) and RCW 36.70A.040, in that its sale of Wellington Park is a *de facto* amendment to the 2015 Parks and Recreation Element of the Snohomish County Comprehensive Plan and other plans that include Wellington as a County Park, and it is inconsistent with Snohomish County Comprehensive Plan Open Space Goal LU 10; Objective LU 10.A; and LU Policies 10.A.1(a –d); and 10.B.2?
7. Has Snohomish County failed to comply with RCW 36.70A.070 (preamble), RCW 36.70A.130(1)(d) and RCW 36.70A.040 in that its discretionary sale of Wellington

1 Hills County Park to Northshore School District for school purposes *per se*
2 encourages and facilitates the location of middle and high schools at a site
3 discouraged by and in contravention of the 2015 Snohomish County Comprehensive
4 Plan Capital Facilities Policy 10.A.5 which requires that the County shall “discourage
the location of middle and high schools outside of UGAs”?

5 8. Has Snohomish County failed to comply with and failed to further RCW
6 36.70A.020(1) and (12), RCW 36.70A.070 (preamble), RCW 36.70A.130(1)(d and
7 RCW 36.70A.040, in that its discretionary sale of Wellington Hills County Park to
8 NSD for school purposes would require the extension of urban utility services and
9 otherwise encourage urban development outside the UGA and further is inconsistent
10 with Snohomish Comprehensive Plan Rural and Utility Policies adopted to
11 discourage the development/sewer outside the UGA, including, *inter alia*: Land Use
Objective LU1.C and Utility Objective UT B.3 and coordinated policies and
development regulations?

12 9. Has Snohomish County failed to comply with RCW 36.70A.100, RCW 36.70A.110,
13 and RCW 36.70A.210 and taken action inconsistent with Snohomish Countywide
14 Planning Policies relating to inter-jurisdictional planning adopted pursuant to the
15 same?
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